

HOUSE JUDICIARY COMMITTEE SUBSTITUTE FOR
HOUSE BUSINESS AND INDUSTRY COMMITTEE SUBSTITUTE FOR
HOUSE BILL 245

46TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2004

AN ACT

RELATING TO HEALTH; ENACTING THE HEALTH CARE REGISTRY ACT;
ESTABLISHING A REGISTRY OF EMPLOYEES DETERMINED TO HAVE
COMMITTED ABUSE, NEGLIGENCE OR MISAPPROPRIATION OF PROPERTY;
MAKING AN APPROPRIATION.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. SHORT TITLE.--This act may be cited as the
"Health Care Registry Act".

Section 2. DEFINITIONS.--As used in the Health Care
Registry Act:

A. "abuse" means the willful infliction of injury,
unreasonable confinement, intimidation or punishment with
resulting physical harm, pain or mental anguish;

B. "department" means the department of health;

C. "direct care" means face-to-face services

1 provided to a service recipient;

2 D. "employee" means a non-licensed person employed
3 or contracted to provide services to persons who are
4 developmentally disabled, physically disabled or elderly,
5 including a personal care attendant funded through the medicaid
6 program;

7 E. "misappropriation of property" means the
8 deliberate misplacement, exploitation or wrongful, temporary or
9 permanent use of a resident's belongings or money without the
10 resident's consent;

11 F. "neglect" means the failure to provide goods and
12 services necessary to avoid physical harm, mental anguish or
13 mental illness;

14 G. "provider" means an agency or organization that
15 delivers home and community-based services to adults or
16 children with developmental disabilities, including an
17 intermediate care facility for the mentally retarded, an agency
18 that delivers services to the elderly or an agency that
19 delivers services to the physically disabled. "Provider" does
20 not include managed care organizations, except for their
21 employees who provide respite care to persons who are
22 developmentally disabled, physically disabled or elderly;

23 H. "reasonable basis" means when facts and
24 circumstances within the provider's knowledge and of which the
25 provider had reasonably trustworthy information are sufficient

.151265.2

1 in themselves to justify a determination that abuse, neglect or
2 misappropriation of property has occurred;

3 I. "registry" means the health care registry; and

4 J. "secretary" means the secretary of health.

5 Section 3. REGISTRY OF EMPLOYEES DETERMINED TO HAVE
6 COMMITTED ABUSE, NEGLECT OR MISAPPROPRIATION OF PROPERTY.--

7 A. The department shall establish a "health care
8 registry" of employees determined by the department to have
9 committed abuse, neglect or misappropriation of property
10 pursuant to the Health Care Registry Act.

11 B. Before a provider hires or contracts with an
12 employee, the provider shall inquire of the department whether
13 the employee is included in the registry.

14 C. When the department receives an inquiry
15 regarding whether the employee or prospective employee is
16 included in the registry, the department shall inform the
17 provider whether the employee or prospective employee is
18 included in the registry.

19 D. Providers that hire employees shall maintain
20 documentation demonstrating that they have checked the registry
21 for each applicant being considered for employment.

22 E. A provider shall not hire or contract with an
23 employee in a direct care setting or other setting that allows
24 for routine and unsupervised physical or financial access to
25 persons who are developmentally disabled, physically disabled

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1 or elderly if the employee is included in the registry.

2 F. A division of the department or other
3 governmental agency funding services to the developmentally
4 disabled, physically disabled or elderly or contracting for the
5 personal care attendant option of the medicaid program may at
6 its discretion not enter into or renew a contract with a
7 provider that fails to comply with the provisions of Subsection
8 E of this section.

9 G. A provider that reports allegations of abuse,
10 neglect or misappropriation of property or that fails to hire
11 an employee because the employee is included in the registry is
12 presumed to be acting in good faith and shall be immune from
13 liability as to that employee for both civil and criminal
14 culpability. If, however, the provider acted in bad faith or
15 with malicious purpose, the provider is not immune from
16 liability as to that employee.

17 H. After a period of five years, an employee placed
18 on the registry may petition the department for removal of the
19 employee's name from the registry. Petitions for removal shall
20 be in writing and mailed or hand-delivered to the department.
21 Upon receipt of a petition, the department shall conduct a fair
22 hearing. Judicial review pursuant to Section 39-3-1.1 NMSA
23 1978 shall apply.

24 I. By January 1, 2005, the department shall
25 promulgate rules necessary to carry out the provisions of the

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1 Health Care Registry Act, including an articulation of
2 standards for determining neglect and a phase-in of the
3 registry by July 1, 2006 for employees of:

4 (1) providers to adults and children with
5 developmental disabilities;

6 (2) providers to adults and children with
7 physical disabilities;

8 (3) providers to the elderly; and

9 (4) personal care attendants funded through
10 the medicaid program.

11 J. The department shall promulgate rules necessary
12 for the implementation of the Health Care Registry Act. The
13 rules shall include:

14 (1) the information that shall appear in the
15 registry;

16 (2) the procedure for making a determination
17 of abuse, neglect or misappropriation of property pursuant to
18 the provisions of this section;

19 (3) the time frame within which the department
20 shall inform a provider whether an employee is included in the
21 registry following the department's receipt of an inquiry by a
22 provider pursuant to the provisions of this section;

23 (4) the procedure to be followed for reporting
24 abuse, neglect or misappropriation of property, for reviewing
25 and investigating a claim of abuse, neglect or misappropriation

.151265.2

1 of property and for determining whether there is a reasonable
2 basis for a complaint of abuse, neglect or misappropriation of
3 property pursuant to the provisions of Section 4 of the Health
4 Care Registry Act;

5 (5) the process by which the department
6 informs the employee of the employee's due process rights,
7 including the right to a hearing pursuant to the provisions of
8 Section 4 of the Health Care Registry Act;

9 (6) what constitutes a reasonable basis for a
10 complaint pursuant to the provisions of Section 4 of this act;

11 (7) the process by which the department shall
12 access an employee's records; and

13 (8) the process by which a provider shall
14 maintain documentation on accessing registry information.

15 Section 4. REVIEW OF REPORT OF ABUSE, NEGLECT OR
16 MISAPPROPRIATION OF PROPERTY--HEARING.--

17 A. In addition to other actions required by law,
18 the department shall review each report it receives of abuse,
19 neglect or misappropriation of property of a person who is
20 developmentally disabled, physically disabled or elderly being
21 served by providers. The department shall also review the
22 reports of abuse, neglect or misappropriation of property that
23 involves employees of providers that it receives from the
24 children, youth and families department or a protective
25 services agency.

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1 B. The department shall investigate all allegations
2 to determine whether there is a reasonable basis for a
3 complaint of abuse, neglect or misappropriation of property.

4 C. If the department determines that abuse, neglect
5 or misappropriation of property has occurred, the department
6 shall notify the employee by personal service or by registered
7 mail with a return receipt of the employee's right to a fair
8 hearing. The notice, which shall also be mailed to the
9 provider, shall include:

10 (1) the nature of the determination of the
11 abuse, neglect or misappropriation of property;

12 (2) the date and time of the occurrence;

13 (3) the employee's right to a fair hearing;

14 (4) the department's intent to report the
15 substantiated findings, once the employee has had the
16 opportunity for a hearing, to the registry; and

17 (5) that the employee's failure to request a
18 hearing in writing within thirty days from the date of the
19 notice shall result in the department's reporting of the
20 employee's placement on the registry to the provider that
21 employs the implicated employee, to the employee and to the
22 registry.

23 D. If an employee waives the right to a hearing or
24 receives a hearing pursuant to Subsection C of this section and
25 the decision of the hearing upholds the department's

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underscoring material = new
~~[bracketed material] = delete~~

1 determination that abuse, neglect or misappropriation of
2 property has occurred, the department shall report the
3 employee's placement on the registry to the provider that
4 employs the implicated employee, to the employee and to the
5 registry.

6 E. If an employee receives a hearing pursuant to
7 Subsection C of this section and the decision of the hearing
8 does not uphold the department's determination that abuse,
9 neglect or misappropriation of property has occurred, the
10 department shall notify the employee and the provider by mail
11 that the department's determination was unsubstantiated and
12 that the department will not report its findings to the
13 registry.

14 F. If the department determines that the employee
15 has committed abuse, neglect or misappropriation of property,
16 the department shall notify the employee of the employee's
17 right to judicial review pursuant to the provisions of Section
18 39-3-1.1 NMSA 1978.

19 G. Records obtained by the department pursuant to
20 the Health Care Registry Act shall be used only to determine
21 whether an employee has committed abuse, neglect or
22 misappropriation of property that would disqualify the employee
23 from employment as a caregiver.

24 H. The department shall not implement the registry
25 if funding is not available for implementation.

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